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**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:  
SUPERIOR AIR PARTS, INC.  
Debtor.

Chapter 11  
Case No. 08-36705-BJH-11

**MOTION TO CONTINUE HEARING ON MOTION TO ENFORCE**

Subject to and without waiving its Motion to Compel Arbitration,<sup>1</sup> Dr. Bruno Küber, in his capacity as Insolvency Administrator (the “Insolvency Administrator”) of Thielert Aircraft Engines GmbH (“TAE”) files this motion to continue the hearing (the “Hearing”) on Superior Air Parts, Inc.’s Motion to Enforce [D.I. 684] (the “Motion to Enforce”), which is currently scheduled for December 20, 2013, and in support hereof, respectfully represents as follows.

**I. PRELIMINARY STATEMENT**

1. Superior Air Parts, Inc. (“Superior”), in its Motion to Enforce, alleges that TAE, a former affiliate of Superior that itself has been through insolvency proceedings in Germany, is in

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<sup>1</sup> Contemporaneously with the filing of this motion, the Insolvency Administrator is filing a Motion to Compel Arbitration and Dismiss Without Prejudice or Stay All Proceedings Related to Superior Air Parts, Inc.’s Motion to Enforce (the “Motion to Compel Arbitration”).

possession of certain categories of documents, information and parts that belong to Superior (the “Materials”). Superior’s plan of reorganization was confirmed on August 29, 2009 – nearly four years before Superior requested that TAE return those Materials. According to Superior, the parties continued to do business during those four years pursuant to a Supplier Agreement the parties entered into in December 2001 and subsequently amended in 2005. It is that Supplier Agreement that Superior contends establishes its ownership of the Materials.

2. Superior’s motion completely ignores and fails to mention that on October 30, 2013 – before Superior filed its motion – the Insolvency Administrator made an arbitration demand (“Arbitration Demand”) on Superior concerning Superior’s demand for the Materials. Superior has refused to acknowledge the Arbitration Demand. Accordingly, the Insolvency Administrator has filed a motion requesting that the Court compel Superior to arbitrate the dispute.

3. In addition, the Insolvency Administrator has served an initial set of written discovery requests on Superior in connection with the Motion to Enforce. Under the current schedule, Superior’s responses to the discovery requests are not due until after the currently scheduled hearing on the Motion to Enforce. In addition, the individuals who the Insolvency Administrator expects to attend the Hearing and testify on his behalf reside in Germany and are unavailable on December 20, 2013.

4. Accordingly, the Insolvency Administrator requests that the Court continue the hearing date to allow time for (a) the parties to conduct discovery and for the Insolvency Administrator’s representatives to attend the hearing and (b) the Court to consider the Motion to Compel Arbitration. The Insolvency Administrator has segregated for safe keeping any property that could possibly belong to Superior, and there is, therefore, no prejudice to Superior from the continuance. The Insolvency Administrator further requests that the Court enter a scheduling order to govern the proceedings on the Motion to Enforce if the parties cannot agree on a schedule.

## II. BACKGROUND FACTS

5. The factual background related to the parties' dispute is set forth in the Insolvency Administrator's Motion to Compel Arbitration, filed contemporaneously herewith, and in the interest of brevity is incorporated herein by reference.<sup>2</sup>

6. As described in the Motion to Compel Arbitration, Superior has not responded in any fashion to the Arbitration Demand. On November 15, 2013 the day after this Court entered an order [D.I. 682] denying the Motion to Show Cause for want of prosecution without prejudice, Superior filed the Motion to Enforce, asking the Court to enter an order directing the Insolvency Administrator to return all property belonging to Superior. The Motion to Enforce, which failed to even mention the Arbitration Demand, was subsequently set for hearing on December 20, 2013.

7. Counsel for the Insolvency Administrator subsequently contacted counsel for Superior to (a) inform counsel that the Insolvency Administrator intended to file a motion to compel arbitration and (b) attempt to reach an agreement on a schedule for the Motion to Enforce and the Motion to Compel Arbitration. Counsel for the Insolvency Administrator also informed counsel for Superior that the Insolvency Administrator intended to seek discovery and that the Insolvency Administrator's witnesses from Germany are not able to travel from Germany to attend a hearing on December 20 even if the discovery could be completed sufficiently in advance of that hearing. Accordingly, counsel for the Insolvency Administrator suggested that the parties identify a future date for an evidentiary hearing on the Motion to Enforce that would work for both parties and, if acceptable to the Court, use the December 20 hearing to address the Insolvency Administrator's Motion to Compel Arbitration.

8. On December 3, 2013, the parties obtained some additional available dates from the Court for an evidentiary hearing on the Motion to Enforce if the Court denies the Motion to Compel Arbitration. Counsel for Superior indicated that he was available on at least certain of

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<sup>2</sup> Capitalized terms not defined herein have the same meaning as set forth in the Motion to Compel Arbitration.

those potential dates, including January 20 and 21. Counsel for the Insolvency Administrator subsequently verified that necessary witnesses in Germany could be available on those dates (or, alternatively, dates in early February) as well, and on December 4, 2013, requested that Superior agree to schedule the evidentiary hearing on the Motion to Enforce for one of those two dates. Although there was no agreement yet on a schedule, in the interest of time, counsel for the Insolvency Administrator also served discovery requests on counsel for Superior on December 4, 2013. Despite more than one request for a response, to date counsel for Superior has not responded to the requests for an agreement on a future date for the evidentiary hearing on the Motion to Enforce. See, e.g., December 5, 2013 email from Simon to Adams, attached as Exhibit A.

### **III. ARGUMENT AND AUTHORITIES**

9. By filing the Motion to Enforce, Superior initiated a contested matter under Fed. R. Bankr. P. 9014. If the Court hears the Motion to Enforce, Superior will be required to offer evidence in support of its claimed right to relief. The Insolvency Administrator is entitled to discover and test this proof in advance of the hearing.

10. The Insolvency Administrator has served his initial discovery requests on Superior. In addition to generally testing Superior's contentions, through the discovery the Insolvency Administrator seeks to (i) identify the information Superior contends it provided to TAE, (ii) obtain contracts and communications between the parties, and (iii) determine whether the information Superior seeks is still owned by Superior or whether Superior may have relinquished any ownership rights. This information, and likely the depositions of one or more of Superior's witnesses, is necessary for the Insolvency Administrator to determine what, if any, portion of the Segregated Property Superior owns and have a meaningful opportunity to have the dispute decided on the merits.

11. In advance of this filing, counsel for the Insolvency Administrator contacted Superior's counsel to confer regarding the scheduling of the hearing on this motion to allow the Court to (i) consider the Insolvency Administrator's to Compel Arbitration, and, in the event this

dispute remains before the Court, (ii) permit time for the parties to conduct discovery before the hearing and (iii) schedule the hearing for a date when the Insolvency Administrator's witnesses, who reside in Germany, can attend.<sup>3</sup> Superior's counsel initially appeared willing to consider continuing the hearing date, and even jointly contacted the Court's clerk with the undersigned counsel to inquire as to the Court's available dates. However, after the Insolvency Administrator's counsel obtained available dates from the persons in Germany that were also available on the Court's calendar and provided that information to Superior's counsel, Superior's counsel never followed up with the undersigned counsel and did not respond to numerous telephone calls and emails.

12. The Court has the authority to continue the hearing on the Motion to Enforce, and should do so here. More than four years have elapsed since the Court entered the Confirmation Order, and Superior only recently requested the return of materials pursuant to that order. The Insolvency Administrator would be prejudiced by an inability to obtain necessary discovery and in the event the hearing occurs on a date when his representatives from Germany are unable to attend. In contrast, Superior will not be prejudiced by a short delay, especially given that any property potentially at issue has been segregated for safekeeping.

#### **IV. CONCLUSION**

The Insolvency Administrator respectfully requests that the Court continue the hearing on the Motion to Enforce, which is currently scheduled for December 20, 2013, for at least thirty (30) days and that the hearing be scheduled for a date convenient to the Court and on which the Insolvency Administrator's representatives from Germany can attend the hearing. In addition, the Insolvency Administrator requests the entry of a scheduling order regarding the proceedings on the Motion to Enforce, and that he be awarded any further relief to which he may be entitled.

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<sup>3</sup> The necessary persons, who reside in Germany, are not able to be in the United States on the scheduled hearing date but have provided several windows of time in January and early February when they could travel to Dallas for the hearing.

Dated: December 9, 2013

Respectfully submitted,

/s/ Craig F. Simon  
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*Counsel for Dr. Bruno Kübler, in his  
Capacity as Insolvency Administrator of  
Thielert Aircraft Engines GmbH*

**CERTIFICATE OF CONFERENCE**

The undersigned certifies that counsel for the Insolvency Administrator made several attempts to confer with counsel for Superior regarding rescheduling the hearing date on the Motion to Enforce. While opposing counsel initially seemed receptive to a continuance to a mutually agreeable date, such counsel thereafter did not respond to several telephone calls and emails. Accordingly, this motion is presented to the Court for determination.

/s/ Craig F. Simon  
CRAIG F. SIMON

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 9th day of December 2013, a true and correct copy of the foregoing document has been served on the parties listed below via first-class mail.

/s/ Craig F. Simon  
CRAIG F. SIMON

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James Adams  
Christopher Robison  
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